

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA
NOV 14 2014
OFFICE OF THE CLERK

STEVE KERRIGAN, Acting Director of the)
Omaha Human Rights and Relations)
Department, on behalf of DENNIS and)
SANDY CARMAN and JAKE YOCUM,))

Plaintiffs,)

vs.)

KELLY MOEHN, Property Manager of)
Meadowbrook Estates, STEVE CLOUSE,)
Property Supervisor of Meadowbrook Estates,)
and F STREET, LLC.,)

Defendants.)

8:13-CV-235

ORDER ON
PRETRIAL CONFERENCE

A final pretrial conference was held on the 14th day of November, 2014. Appearing were Michelle Peters, counsel for the Plaintiff, and Dan Welch and James P. Clements, Jr., counsel for the Defendants.

(A) **Exhibits.** The following exhibits are received in evidence without objection and no formal offer need be made of them: SEE ATTACHED LISTS.

(B) **Uncontroverted Facts.** The parties have agreed that the following may be accepted as established facts for purposes of this case only:

1. This action is brought pursuant to 42 U.S.C. §§ 601 *et seq.* The Court has jurisdiction over the subject matter.
2. Steve Kerrigan, Dennis Carman, Sandy Carman and Jake Yocum are residents of Omaha, Nebraska. Defendants are residents of Douglas County, Nebraska.
3. Jake Yocum is disabled as defined by the Act.

3C
NA

(C) **Controverted and Unresolved Issues.** The issues remaining to be determined and unresolved matters for the court's attention are:

1. Whether Jake Yocum was subjected to discrimination in the rental of housing by Defendants based upon his disability.
2. Whether Dennis and Sandy Carman were discriminated against in the rental of housing by Defendants alleged failure to provide a reasonable accommodation.
3. Whether Dennis Carman, Sandy Carman and Jake Yocum were discriminated against in the rental of housing by Defendants based upon Defendant's allegedly treating them differently than other non-disabled tenants at Meadowbrook Estates.
4. Whether the Defendant's articulated reason for threatening eviction was a pretext for discrimination.
5. If Dennis Carman, Sandy Carman and/or Jake Yocum were discriminated against, the amount of compensatory damages proximately caused by the actions of the Defendants.
6. If Defendants acted with malice or reckless indifference with regard to Dennis Carman, Sandy Carman and/or Jake Yocum's federally protected rights whether punitive damages should be awarded and in what amount.

(D) **Witnesses.** All witnesses, including rebuttal witnesses, expected to be called to testify by plaintiff, except those who may be called for impeachment purposes as defined in NECivR 16.2(c) only, are:

WITNESSES WHO WILL BE CALLED TO TESTIFY:

Dennis Carman
Sandy Carman
Jake Yocum
Jeremy McLeod

WITNESSES WHO MAY BE CALLED TO TESTIFY:

Marty Langworthy
Josh Noble
Melody Walls

All witnesses expected to be called to testify by defendants, except those who may be called for impeachment purposes as defined in NECivR 16.2 (c) only, are:

WITNESSES WHO WILL BE CALLED TO TESTIFY:

Steve Clouse
Kelly Moehn
Trish Linscott
Jeff Linscott
Anthony Farragia
Kathleen Boylan
Marcy Maassen

WITNESSES WHO MAY BE CALLED TO TESTIFY:

Janet Farragia
Tammy Dooley
Deborah Foy
Marty Langworthy
Nicole Plessel

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except impeachment. A witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived shall not be permitted to testify for any other purpose, over objection, unless such witness has been disclosed pursuant to Federal Rule of Civil Procedure 26(a)(3). A witness appearing on any party's witness list may be called by any other party.

(E) Expert Witnesses' Qualifications.

none

(F) **Voir Dire.** Counsel have reviewed Fed. R. Civ. P. 47(a) and NELR 47.1 and suggest the following with regard to the conduct of juror examination: Examination first by the Court, then supplemented by further inquiry by counsel.

(G) **Number of Jurors.** Counsel have reviewed Federal Rule of Civil Procedure 48 and NECivR 48.1 and suggest that this matter be tried to a jury composed of 12 members.

(H) **Verdict.** The parties will not stipulate to a less-than-unanimous verdict.

(I) **Brief, Instructions, and Proposed Findings.** Counsel have reviewed NECivR 39.2(a), 51.1(a), and 52.1, and suggest the following schedule for filing trial briefs, proposed jury instructions, and proposed findings of fact, as applicable:

Trial briefs and proposed jury instructions shall be ~~delivered~~ ^{filed} to the judge at least five (5) working days before the first day of trial.

Judge, copy of exhibit notebook and deposition notebook to be delivered to trial judge 3 working days before trial.

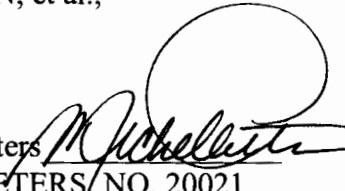
(J) **Length of Trial.** Counsel estimate the trial will consume not less than 2 days, not more than 4 days, and probably about 3 days.

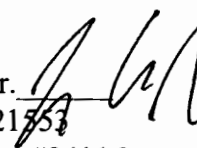
(K) **Trial Date.** Trial is set for the week of 12/15/14.

Accepted by the parties this 17th day of November, 2014.

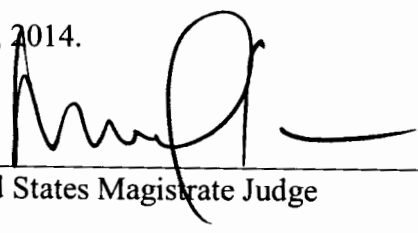
STEVE KERRIGAN, et al.,
Plaintiff,

KELLY MOEHN, et al.,
Defendants

By s/Michelle Peters 
MICHELLE PETERS, NO. 20021
Assistant City Attorney
804 Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183
(402)444-5115
Michelle.peters@cityofomaha.org

By s/ James P. Clements, Jr. 
DANIEL J. WELCH, NO. 21553
JAMES P. CLEMENTS, JR., #24116
WELCH LAW FIRM, P.C.
1299 Farnam Street, Suite 1220
Omaha, NE 68102-1505
(402)341-1200
dan@welchlawfirm.com
jim@welchlawfirm.com

Approved by the Court this 4th day of November, 2014.



United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

STEVE KERRIGAN, et al.,

Plaintiff,

v.

KELLY MOEHN, Property Manager of
Meadowbrook Estates, STEVE CLOUSE,
Property Supervisor of Meadowbrook
Estates, and F STREET, LIMITED
LIABILITY CORPORATION,

Defendants.

Case No. 8:13-cv-235-JFB-TDT

LIST OF EXHIBITS

Courtroom Deputy:

Court Reporter:

Trial Dates: _____

Exhibit No. PLF DEF	DESCRIPTION	OFF	OBJ	RECD	NOT RECD	DATE
1	Rental Agreement dated 8/15/2001			X		
2	Addendum to Rental Agreement dated 3/17/12			X		
3	Community Rules and Regulations			X		
4	Letter dated 5/21/12 from Meadowbrook to Carmans			X		
5	7/25/12 letter to Dennis Carman from Meadowbrook			X		
6	7/27/12 Letter from Dennis Carman to Meadowbrook			X		
7	8/16/12 Notice of Non-Compliance (noise)			X		
8	5-day Notice to Vacate dated 8/16/12			X		
9	Medical Records re: Jake Yocum			X		
10	Photo of "Office Parking Only" sign			X		
11	Photo of tarped ATV			X		

OBJECTIONS

R: Relevancy

H: Hearsay

A: Authenticity

O: Other (specify)

JC
AD

Exhibit No. PLF DEF		DESCRIPTION	OFF	OBJ	RECD	NOT RECD	DATE
12		Photo of tarped vehicle in carport			X		
13		Photo of 2 nd tarped vehicle in carport			X		
14		Photo of tarped vehicle in driveway			X		
15		Photo of unlicensed vehicle			X		
16		Photo of vehicle parked in vacant home driveway			X		
17		Photo of inoperable vehicle			X		
18		Photo of car on jacks			X		
	19	5/14/12 Notice to Carmans from Meadowbrook Estates re: Yocum working on a car a parking pad and resulting damage			X		
	20	5/14/2012 Immediate Tow Notice to Carmans from Meadowbrook Estates			X		
	21	6/20/12 Invoice to Carmans from Meadowbrook Estates re: parking pad			X		
	22	Notices of noncompliance issued to other Meadowbrook Estates residents from January 1, 2012 – January 1, 2013			X		
	23	Five Day Notices issued to other Meadowbrook Estates residents from January 1, 2012 – January 1, 2013			X		
	24	Six photos of Meadowbrook Estates property			X		
	25						
	26						
	27						
	28						

OBJECTIONS**R:** Relevancy**H:** Hearsay**A:** Authenticity**O:** Other (specify)56
11